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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Amendment of Section 2.106 of the) **ET Docket No. 95-18**
Commission's Rules to Allocate) RM-7927
Spectrum at 2 GHz for Use) PP-28
by the Mobile-Satellite Service)

To: The Commission

**REPLY COMMENTS OF THE ASSOCIATION OF AMERICA'S PUBLIC
TELEVISION STATIONS AND THE PUBLIC BROADCASTING SERVICE**

1. The Association of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") hereby submit their Reply Comments in response to initial comments filed with respect to the Commission's *Further Notice of Proposed Rule Making* in the above-referenced proceeding ("FNPRM").¹ APTS and PBS are nonprofit organizations whose members comprise nearly all of the nation's 175 noncommercial educational television licensees. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch, as well as engaging in planning and research activities on behalf of its members. PBS provides program distribution and other services to its members. PBS is also a leader in the development of new and improved television technologies and frequently speaks for the public television community in matters relating to the use of the television broadcast spectrum.

¹ *First Report and Order and Further Notice of Proposed Rule Making*, ET Docket No. 95-18, FCC 97-93, released March 14, 1997.

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2. Given the Commission's goal of allowing market entry to a new competitive mobile service, APTS and PBS accept the Commission's plan to relocate the Broadcast Auxiliary Services ("BAS") so as to allow MSS licensees in the 1990-2025 MHz band. However, APTS and PBS are concerned that the transition must be conducted fairly and without interruption of BAS operations for public television licensees, which are a vital source of educational and informational programming for our nation.

**The Commission Should Not Reconsider its Decision in this Rule Making
Requiring MSS Parties to Bear the Costs of Relocating BAS Operations**

3. In its *First Report and Order*, the Commission established that the "cost of all steps necessary for clearing the 1990-2025 MHz band for MSS operations will be borne by MSS operators."² The Commission's decision is based upon its Emerging Technologies policies, which require the new users of the spectrum, in this case the MSS users, to bear all costs of relocation of the incumbent BAS licensees.³ However, despite the Commission's established policy, certain MSS providers are now attempting to dissuade the Commission from this decision through this rule making proceeding.⁴ It is improper of these MSS parties to ask the Commission to reconsider its

² See *First Report and Order and Further Notice of Proposed Rule Making* at 15.

³ See *In re Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (Emerging Technologies)*, ET Docket 92-9; *First Report and Order and Second Notice of Proposed Rule Making*, FCC 92-437, 7 FCC Rcd 6886 (1992); *Second Report and Order*, FCC 93-350; 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, FCC 93-351, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, FCC 94-60, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, FCC 94-303, 9 FCC Rcd. 7797 (1994).

⁴ Additionally, the MSS Coalition has filed a petition for reconsideration of the Commission's Order. See Further Comments of the MSS Coalition at 2.

fundamental premise of the Emerging Technologies rules in this rule making proceeding. Further, any reconsideration of its relocation policies would unfairly burden television licensees, particularly public television licensees, which have limited financial resources and already have their plates full attempting to obtain funding for and implementing the transition to digital television ("DTV").⁵ Therefore, the Commission should maintain its position as established in the Emerging Technologies rules and deny any reconsideration of this fundamental condition precedent to reallocation of spectrum.

The Commission Should Establish a Collective Negotiation Structure, as Proposed by NAB, MSTV, and RTNDA, and Should Include Public Broadcasting Representation

4. APTS and PBS fully support the joint comments submitted by the Association for Maximum Service Television, Inc. ("MSTV"), the National Association of Broadcasters ("NAB") and the Radio Television News Directors Association ("RTNDA") (collectively "Joint Commenters"). In particular, APTS and PBS support the Joint Commenters' proposal for a BAS relocation plan that provides for collective negotiation of relocation agreements for the broadcast industry (subject to opt-out provisions) and a single, mandatory negotiation time period.

5. As pointed out by the Joint Commenters, the number of BAS incumbents, the itinerant nature of their operations, and the ubiquitous reach of MSS signals make this relocation different from the Personal Communications Service ("PCS") relocation model, proposed as

⁵ See, e.g., Comments of West Central Illinois Educational Telecommunications Cooperative, a noncommercial licensee, which details the tight funding and enormous costs of digital television conversion and its concerns about the BAS relocation.

analogous by the Commission in its FNPRM.⁶ MSS licensees must relocate virtually all BAS incumbents nationwide prior to commencing service due to the incompatibility of the BAS and MSS services operating together in the same band. By consolidating negotiations between MSS licensees and BAS incumbents nationwide, the transition will proceed as quickly and efficiently as possible while protecting the public's interests in maintaining access to necessary broadcasting operations. APTS and PBS will cooperate to the fullest extent in the compilation of an accurate list of all BAS equipment nationwide.

6. APTS and PBS also agree with the Joint Commenters that relocation expenses must cover the cost of comparable equipment, meaning equipment that is equal, or superior, to incumbents' current equipment without any consideration of age of the current BAS equipment. The important consideration is that incumbents be made whole. If not for the relocation, many public broadcasters would not have to (nor could they afford to) replace their current BAS equipment for an extended period of time. These licensees should not be penalized for maintaining their current equipment to the best of their ability beyond the normal "depreciation" life in a commercial environment. Additionally, APTS and PBS support the Joint Commenters' request that MSS licensees should be required to pay all relocation expenses prior to any actual adjustments to any BAS equipment. As public television licensees, in particular, are generally operating within tight

⁶ Joint Commenters estimate that there are approximately 2,000 fixed and 5,500 mobile BAS incumbents nationwide. *See* Joint Comments of the Associations for Maximum Service Television, Inc., The National Association of Broadcasters and the Radio Television News Directors Association at 7. *See also* Comments of Comsearch where Comsearch notes a study by Carl T. Jones Corporation in which it is estimated that there are 2,586 fixed stations and 1,420 mobile stations in the affected band. While these are conflicting numbers, it is obvious that there are large numbers of incumbents that will need to be relocated.

financial constraints, they would be unable to absorb the costs of the BAS relocation for any period of time.

7. Although NAB and MSTV have experience representing broadcasters in collective negotiations arising from the DTV proceeding and are qualified to participate in a negotiation group, APTS and PBS submit that a representative of public television on the negotiating body is necessary to consider and protect the interests of public television licensees during the BAS relocation.⁷ As public television is dependent on federal and state funding and private contributions, public television licensees have unique considerations concerning the costs and timing of the BAS relocation. These considerations require a public television representative on the negotiating committee to represent the interests of public television.

Conclusion

8. APTS and PBS accept the Commission's decision to relocate incumbent BAS in the current proceeding, with the MSS entrants fully bearing the costs of BAS relocation. To that end, APTS and PBS support the proposal presented by the Joint Commenters for a negotiating entity

⁷ Joint Commenters point out that in the digital television proceeding, MSTV and NAB, through the Broadcasters Caucus, organized the nation's television broadcasters into 10 regional groups and worked with each to address regional issues associated with the roll-out of DTV. It is important to note that these regional groups have public television representatives, as does the Broadcasters Caucus.

composed of NAB and MSTV, with the addition of a public television representative, to effect the transition of BAS in a timely, efficient and fair manner for all participants.

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